

Committee Secretary
Legal and Constitutional Affairs References Committee
Department of the Senate
Parliament House
CANBERRA

Illegal Tobacco Crisis in Australia: Submission from Clive Bates (United Kingdom)

1. I have a long-standing interest in tobacco policy worldwide, particularly the concept of tobacco harm reduction. Tobacco harm reduction is the migration of the global consumer nicotine market from high-risk to low-risk use, with very large potential public health gains. I have no relevant conflicts of interest, and my primary concern is the reduction in the heavy burden of disease and death overwhelmingly attributable to nicotine use through smoking.¹
2. **Economic fundamentals drive the illicit market.** The main driver of illicit trade in Australia is the *de facto* prohibition of economically valuable products for which there is strong demand and few lawful alternatives. This creates a powerful economic opportunity that generates a lucrative income stream for criminal networks operating in an informal, unregulated market. Until the underlying drivers are addressed, the illicit trade will continue.
3. **For vapes, perverse, restrictive regulation is the source of the illicit market.** The illicit share of the vape market is 95.7%, generating criminal profits of A\$1.6 billion, according to the Illicit Tobacco and E-cigarette Commissioner (ITEC).² This is driven by self-defeating regulation that creates barriers to Australians accessing far safer alternatives to cigarettes. Taken together, the cost, time, product restrictions, and limited access create a *de facto* prohibition imposed by bureaucratic inertia. The government's policy is not only a failure, causing more harm than good, but also a patronising and paternalistic denial of Australians' right to protect their own health, on their own initiative and at their own expense.
4. **For smoked tobacco, high taxation drives the illicit market.** The ITEC assessment shows the illicit market accounts for 50-60% of the total tobacco market, creating criminal profits of A\$4.1-6.9 billion. This is driven by the world's highest tobacco tax rates. As John Stuart Mill put it in *On Liberty* (1859):³

To tax stimulants for the sole purpose of making them more difficult to be obtained, is a measure differing only in degree from their entire prohibition; and would be justifiable only if that were justifiable. Every increase of cost is a prohibition to those whose means do not come up to the augmented price; and to those who do, it is a penalty laid on them for gratifying a particular taste.
5. **Reform the nicotine market to defeat smoking.** A policy that prices people who smoke out of the legal market and into the lawless and cheaper illicit tobacco market will not work. Rather, the government should encourage lawful, regulated smoke-free alternatives to compete with cigarettes to meet the persistent demand for nicotine but at far lower risks to

¹ Clive Bates, The Counterfactual, About – biographical details [link]

² Commonwealth of Australia. (2025). *Illicit Tobacco and E-cigarette Commissioner Report 2024-25*. www.itec.gov.au

³ JS Mill, *On Liberty*, Chapter V. 1859 [link]

health and welfare. Australia's tobacco tax policy would have been more effective if the government had encouraged switching to vapes in response to the strong price signal.

6. **“More enforcement” will not work.** There will be a predictable call for “more enforcement” to make failed prohibitions work, despite large sums already spent ineffectively. While enforcement raids, seizures, and display of captured contraband make compelling political theatre, they do little to affect the underlying economic incentive. If \$10 million worth of illicit vapes are seized at a port, that does lead to a reduction in illicit vape sales of \$10 million: it means other illicit suppliers meet the demand via alternative supply routes, subsequent shipments, or temporary switching between products. *Seizures tell us only what is seized; they tell us nothing about what is still sold.* If my local supermarket unexpectedly closes, I do not starve to death; I travel to another branch, shop at a different chain, or buy online with a delivery service. All markets, legal or illicit, adapt and adjust to partial supply interruptions.

7. **The flaws in the policy have been evident for at least 10 years.** The opportunity to comment is once again welcome. However, I have commented on Australian policy regularly over the past ten years, and my advice has been consistent and remains largely unchanged.
 - April 2024: Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024 Comment to Senate Standing Committees on Community Affairs. Comment by Clive Bates. [\[PDF\]](#)
 - October 2023: Senate Standing Committee Inquiry: The Public Health (Tobacco and Other Products) Bill 2023 [Provisions] and Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Bill 20231. Submission by Clive Bates [\[PDF\]](#)
 - November 2020: Parliament of Australia Senate Select Committee on Tobacco Harm Reduction Public Submission by Clive Bates, United Kingdom 3 November 2020 [\[link\]](#)[\[PDF\]](#)
 - July 2020: Comment on Therapeutic Goods Administration consultation on legalising the sale of heated tobacco products in Australia. David Abrams, Clive Bates, Ray Niaura, and David Sweanor. [\[link\]](#)
 - October 2017: Two further submissions to the Australian parliamentary inquiry into The Use and Marketing of Electronic Cigarettes and Personal Vaporisers in Australia.
 1. Clive Bates & Colin Mendelsohn. Do vapour products reduce or increase smoking? [\[link\]](#);
 2. Clive Bates, Memo to accompany appearance before the committee (19 October 2017). Five talking points inspired by the Royal College of Physicians [\[link\]](#)
 - August 2017: Clive Bates, Submission to Senate Committee on Community Affairs, Comments on draft Vaporised Nicotine Products Bill 2017 [\[link\]](#)
 - July 2017: Clive Bates, Submission to Parliament of Australia, Committee on Health, Aged Care and Sport, Inquiry into The Use and Marketing of Electronic Cigarettes and Personal Vaporisers in Australia [\[link\]](#)
 - February 2017: 21 international and Australian experts. Further comments on the interim decision on a proposal to amend the Poisons Standard entry for nicotine [\[link\]](#)
 - September 2016: 40 international and Australian experts. Proposed amendments to the Poisons Standard Consultation - reclassifying nicotine to allow e-liquids to be sold legally in Australia. [\[link\]](#)
 - August 2015: Clive Bates, Ron Borland, Lynn Kozlowski, David Sweanor. Economics Legislation Committee inquiry into personal choice and community [\[link\]](#)

8. **What to do now.** I have made many proposals in the papers above. To summarise:
 - **Focus on reductions in smoking.** The key public health challenge is to reduce smoking as rapidly and deeply as possible, with particular focus on middle-aged smokers – the population at greatest and most immediate risk. It is not to create a nicotine or drug-free society, destroy the tobacco industry, or imagine that young people can be made to

abstain from all adolescent risk-taking. The public health purpose is to deal with the grotesque burden of disease and death caused by inhaling tobacco smoke and make continuing nicotine use much safer, at any age. Nothing will be achieved until there is clarity about this goal.

- **Migrate the nicotine market from high-risk to low-risk nicotine use.** The smoke-free nicotine products will displace smoking via two mechanisms, *switching* and *diversion*. With the right information, regulation, taxation and incentives, adults will switch from smoked to smoke-free nicotine use, and young people who would otherwise have taken up smoking will use a smoke-free product instead, diverting their uptake away from smoking. These young people will then age into the general adult population, never having smoked. For those who would otherwise have smoked, youth vaping is a major public health benefit. These two processes combine over time to migrate the nicotine market from high-risk combustion products to low-risk smoke-free products. The result will be radically reduced population-level risks arising from societal nicotine use. There may be new users of nicotine who would never have smoked, but they are at low risk and more likely to be transient or lighter consumers.
 - **Policy imperative: keep the nicotine market lawful.** Illicit trade creates a market for unregulated products; it undermines legitimate retailing and draws young people in as suppliers as well as consumers. It exposes everyone involved to other illicit products. Multiple societal harms arise from criminality, extortion, and corruption. The formation of illicit markets in tobacco and vapes was an entirely predictable (and predicted) outcome of the government's policy choices. Those policies must now be rolled back, and efforts must be made to reassert control over these markets. Many will see this as a "defeat" for tobacco control or some sort of capitulation to commercial interests. It is a defeat for these policies, *but the defeat has already happened*. Once these markets became predominantly illicit, tobacco control lost control. The policy imperative now is to recover and renormalise a lawful market. As discussed above, recovery is unlikely with an expensive, though ultimately futile, enforcement effort. To fix the illicit market, it is necessary to address the underlying economic drivers.
 - **Employ risk-proportionate regulation.** The focus of regulation for vapes and other smoke-free products should be on consumer protection (product safety, accurate description, and informative risk communication), with constraints on marketing, branding, and descriptors (including flavour descriptors), and age-secure retailing. None of this will work perfectly, but the question for policymakers is whether it is superior to an unregulated illicit market and more likely to bring order and public health benefits with manageable risks.
9. **Consider more diverse advice.** For years, there has been a political consensus to follow the tobacco control advice of Australia's influential public health establishment. The government has faithfully implemented the policy agenda of the most vocal activists, yet the result is a chaotic, lawless fiasco. It is time for the government to be more sceptical about the advice from these groups and individuals, and more open to economically grounded and consumer-focused analysis about the nicotine market and tobacco harm reduction.